In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 836

ALASKA JUNEAU GOLD MINING COMPANY, A CORPORATION, PETITIONER

v.

E. E. ROBERTSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, AS AMICUS CURIAE

This case presents the question whether the overtime requirements of the Fair Labor Standards Act of 1938, c. 676, 52 Stat. 1060, 29 U. S. C., sec. 201, are satisfied by dividing a daily wage paid for 8 hours of work into "straight time" for 6.6 or 5.7 hours and "overtime" for 1.4 or 2.3 hours in such a way that the total daily compensation equals the agreed daily wage. The question is no different from that settled in *Walling* v. *Helmerich & Payne,* 323 U. S. 37, and that presented in *Walling* v. *Alaska Pacific Consolidated*

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Mining Co., 152 F. 2d 812 (C. C. A. 9), certiorari denied, 327 U. S. 803.

The three cases now pending before this Court which involve the interpretation of Section 7 of the Act (*Walling* v. *Halliburton Oil Well Cementing Co.*, No. 74; *149 Madison Ave. Corp.* v. *Asselta*, No. 497; *Walling* v. *The General Industries Co.*, No 564), are concerned with the correct means of determining the regular rate when the employee is paid a basic weekly or monthly salary and do not involve the issue raised by petitioner here. The validity of the overtime provisions of the "Krug-Lewis contract" referred to on page 10 of the petition is not raised in the cases there cited, and in any event that agreement, providing for daily overtime after 7 hours (the normal prewar work-day in the mines), may be distinguished from a transparently artificial device to pay "overtime" after 6.6 or 5.7 hours.

Inasmuch as the petition raises only questions already settled by decisions of this Court, and not involved in cases now pending before it, we respectfully submit that the petition should be denied.

GEORGE T. WASHINGTON,
Acting Solicitor General.

WILLIAM S. TYSON,
Solicitor, U. S. Department of Labor.

JANUARY 1947.

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